

GEORGE J. TICHY, II, Bar No. 041146
MICHELLE R. BARRETT, Bar No. 197280
KIMBERLY L. OWENS, Bar No. 233185
JUSTIN T. CURLEY, Bar No. 233287
LITTLER MENDELSON
A Professional Corporation
650 California Street, 20th Floor
San Francisco, California 94108
Telephone: (415) 433-1940
Facsimile: (415) 399-8490
E-mail: gtichy@littler.com, mbarrett@littler.com,
kowens@littler.com, jcurlley@littler.com

Attorneys for Defendants
HSBC MORTGAGE CORPORATION (USA) and
HSBC BANK USA, N.A.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Philip Wong, Frederic Chaussy, and Leslie Marie Shearn, individually, on behalf of all others similarly situated, and on behalf of the general public.

Plaintiffs.

V.

HSBC Mortgage Corporation (USA);
HSBC Bank USA, N.A.; and DOES 1
through 50, inclusive.

Defendants.

Case No. C 07 2446 MMC [ECF]

**DECLARATION OF MICHELLE R.
BARRETT IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION,
PRODUCTION OF UPDATED CLASS
LIST, AND PARTIAL SUMMARY
JUDGMENT**

Date: February 8, 2008
Time: 9:00 a.m.
Courtroom: 7 (19th Floor)
Judge: Hon. Maxine M. Chesney

Complaint Filed: June 29, 2007 (Amended)
Trial Date: Not Yet Set

1 I, Michelle R. Barrett, hereby declare and state:

2 1. I have personal knowledge of the facts set forth below. If called as a witness,
 3 I could and would testify to the following.

4 2. I am a shareholder with Littler Mendelson, a Professional Corporation, which
 5 is counsel of record for Defendants HSBC Mortgage Corporation (USA) (hereinafter "HMCU") and
 6 HSBC Bank USA, N.A. (hereinafter "HBUS") in this action.

7 3. When Plaintiffs initially filed this lawsuit, my partner George J. Tichy, II and
 8 counsel for Plaintiffs, Bryan J. Schwartz, had a number of discussions and exchanged letters
 9 regarding the dismissal of HBUS from this case. The Rule 30(b)(6) depositions taken of HBUS and
 10 HMCU have revealed facts that Defendants believe to show that HMCU is the only entity which
 11 employs the putative class which Plaintiffs purport to represent. However, Plaintiffs and their
 12 counsel have steadfastly refused to dismiss HBUS.

13 4. On page sixteen (16) of Plaintiffs' Motion and in Paragraph six (6) of the
 14 Declaration of Bryan J. Schwartz, Plaintiffs' imply that they did not receive a list of the loan officers
 15 employed by HBUS during the last three (3) years until November 5, 2007. That is incorrect. I sent
 16 Plaintiffs' counsel a list of Senior Retail Mortgage Lending Consultant and Retail Mortgage Lending
 17 Consultant names, addresses, job titles and dates of employment on October 2, 2007. Attached as
 18 Exhibit 1 is a true and correct copy of the email and letter I sent to Mr. Schwartz transmitting that
 19 information on October 2, 2007. Thereafter, I sent Mr. Schwartz the same information for Premier
 20 Mortgage Sales Officers on October 11, 2007. There is no need to compel production of a list of
 21 putative class members because Plaintiffs' counsel has already received lists of all 475 putative class
 22 members.

23 5. Opt-In Plaintiffs and putative class members employed by HMCU ad
 24 Premier Mortgage Sales Officers had a unique job position. Attached as Exhibit 2 is a true and
 25 correct copy of the job description for the position of Premier Mortgage Sales Officers.

26 6. Attached as Exhibit 3 are true and correct copies of opinion letters regarding
 27 mortgage loan officers that were issued by the Department of Labor ("DOL") on March 31, 2006
 28 and September 8, 2006.

7. On August 30, 2007, Plaintiffs' counsel took the deposition of Susan R. Marczak, Human Resources Director of HBUS. Attached as Exhibit 4 is a true and correct copy of additional pages of the transcript of Ms. Marczak's deposition that are relevant to the resolution of this motion.

8. On September 11, 2007, Plaintiff's counsel took the deposition of David Gates, the National Sales and Marketing Manager for HMCU. Attached as Exhibit 5 is a true and correct copy of additional relevant pages of the transcript of Mr. Gate's deposition.

9. On December 19, 2007, Plaintiff's counsel took the deposition of Jeanette Jennings, a Group Director for Human Resources for HBUS. I have attached additional relevant pages from the transcript of Ms. Jennings' deposition as Exhibit 6.

10. Defendants' counsel deposed Plaintiff Philip Wong on November 29, 2007. I have attached additional relevant pages of his deposition as Exhibit 7.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing declaration is true and correct to the best of my personal knowledge.

Executed this 18th day of January, 2008, in San Francisco, California.

MICHELLE R. BARRETT